



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

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MEMORANDUM FOR ALL STAFF JUDGE ADVOCATES

FROM: HQ USAF/JA
1420 Air Force Pentagon
Washington, DC 20330-1420

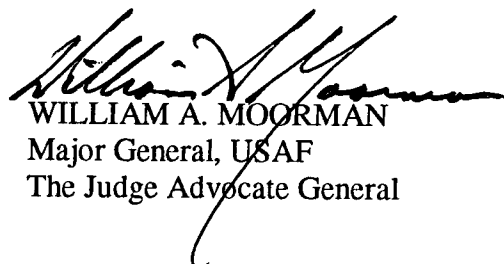
SUBJECT: TJAG Special Subject Letter 2000-16: **Participation in Private Organizations in a Personal Capacity**

Summary. This letter and its attachment provides guidance regarding the extent to which Air Force personnel can participate in and support private organizations in their personal capacities. It supplements TJAG Special Subject Letter 2000-2, Support for Professional Military Associations, dated 4 Feb 00. (See: <https://ds.jag.af.mil/View/Collection-3992>)

Background. Earlier this year, I sent out a letter and talking paper addressing support for professional military associations and the Chief of Staff sent a similar memo to commanders. The purpose of these memos was to remind commanders and judge advocates that the Joint Ethics Regulation (JER) permits some degree of *official* support for private organizations. The underlying philosophy is that professional military organizations should be supported when it is authorized under the JER and appropriate under the circumstances.

Support in Personal Capacities. The second part of the same issue is the extent to which Air Force personnel can participate in and support private organizations in their *personal* capacities. We have been told that some individuals believe that the JER essentially precludes active participation in private organizations. This is not true. While the JER contains some restrictions on activities in support of private organizations, Air Force personnel can be constructively involved with private organizations without fear of violating the law.

The attached talking paper is a summary of the ethics rules on personal participation with private organizations. I encourage you to use this information to help spread the word that personal support for private organizations is not only permissible, it is encouraged because of the positive return it provides to the Air Force, one's profession, and the local community.


WILLIAM A. MOORMAN
Major General, USAF
The Judge Advocate General

Attachment:
Talking Paper, Personal Participation in Private
Organizations

PERSONAL PARTICIPATION

IN

PRIVATE ORGANIZATIONS

Air Force personnel, like other citizens, have the right to join private organizations. However, Air Force personnel should understand that active participation in a private organization may trigger the application of Joint Ethics Regulation (JER)(DoD 5500.7-R) rules to their personal and official activities. The following rules apply to Air Force personnel (active duty, reserve, and civilian) who participate in private organizations.

Membership and Management

- Air Force personnel may become members of, and participate in, the management of private organizations as individuals in a personal capacity, provided they act exclusively outside the scope of their official position. JER sec. 3-301
- Air Force personnel may not serve in a personal capacity in a management position with a private organization if the position was offered because of their Air Force position (except for organizations listed in JER sec. 3-210.a.). JER sec. 3-301
- General officers may not accept compensation for serving as an officer or board member of a private organization in their personal capacities unless SECAF has granted approval. DEPSECDEF Memo, 23 Jul 96
- Air Force personnel may not serve as advisors to defense contractors in their *official* capacities and must be extremely careful when doing so in their personal capacities. DoD/GC Memo, 7 May 99
- "...it is DoD policy to scrutinize carefully requests from personnel who are invited to serve in their personal capacity as advisors for commercial entities that do business with DoD. While such outside activity is not always barred as a matter of DoD policy, its nexus with a Defense contractor inherently involves a heightened risk of a violation, or an appearance of a violation, of ethical standards, thereby mandating careful evaluation and scrutiny." DoD/GC Memo, 7 May 99
- Personnel who file financial disclosure reports (SF 278, OGE 450) and who receive compensation from a "prohibited source" must obtain written approval from the Agency Designee before engaging in that activity. JER 2-206

- A “prohibited source” includes any person or entity that: (1) seeks official action by the employee’s agency; (2) does or seeks business with the agency; (3) conducts activities regulated by the agency; (4) has interests that may be substantially affected by performance or nonperformance of the employee’s official duties; or (5) is an organization a majority of whose members fall into one of the above categories.
- Private organizations can be “prohibited sources” under the JER, depending upon the facts of the situation

Neutrality

- Air Force employees must remain impartial in dealing with issues that involve a private organization with which they are associated in a personal capacity JER sec. 3-302
- Employees are generally prohibited from engaging in any official activities in which a private organization is a party or has a financial interest if the employee is an “active participant” in the private organization or has been an officer within the last year. JER sec. 3-302
 - The term “active participant” includes service as an official of the organization, such as a committee chairperson or organization spokesman. It also includes significant time devoted to promoting specific programs, including fundraising efforts. Mere payment of dues or the donation of financial support to a private organization does not, in itself, constitute active participation. 5 CFR 2635.502(b)(v)
- When an Air Force employee seeks permission to travel to or participate in activities of a private organization and the Agency Designee or travel approving authority is an “active participant” in the same private organization, the Agency Designee or travel approving authority may not act on the request, but must defer the action to an independent authority. JER sec. 3-300.d.
- When an Air Force employee serves as an officer of a private organization, or its director, trustee, general partner or employee, the interests of the private organization are imputed to the Air Force employee for purposes of conflict of interest rules. 5 CFR 2635.402(a)
- When an Air Force employee serves as an officer or is an “active participant” in a private organization, the employee must ensure that he or she avoids taking any official action in a matter that may have a direct and predictable impact on the financial interest of the private organization. 5 CFR 2635.502(a)

Representation of the Organization

- Air Force personnel may not represent a private organization before the Federal Government on particular matters in which the Government is a party or has a direct and substantial interest. 18 U.S.C. 203 and 205
 - An exception applies for non-compensated representation of non-profit professional, recreational or similar groups if the majority of organization members are Federal personnel or their dependents. 18 U.S.C. 205(d)(2)

Government Resources

- Air Force employees may not use Government resources, personnel or official time for personal use in support of a private organization unless the use falls under an exception permitted by the JER. JER sec. 3-305.b.
 - An exception permits a (disinterested) commander to make limited logistical support available for private organizations if a 7-part test is satisfied. JER sec. 3-211
 - Another exception permits excused absences for “reasonable periods of time” for employees to voluntarily participate in the activities of non-profit professional associations and learned societies. JER sec. 3-300.b.
 - The same exception permits the limited use of Government equipment and administrative support to prepare professional papers for a private organization if: (1) the paper is related to the employee’s official duties; (2) the Agency derives some benefit from the participation; and (3) the preparation does not interfere with the employee’s duties. JER sec. 3-300.b.

Fundraising

- Air Force employees may voluntarily participate in private organization activities as individuals in their personal capacities, provided they act exclusively outside the scope of their official positions. JER 3-300.a.
 - Air Force employees may not use or allow the use of their official titles, position, or organizational names in connection with activities performed in their personal capacities. 5 CFR 2635.808(c)(2); JER 3-300.a(1)
 - This does not, however, preclude the use of military grade and department as part of an individual’s name (e.g., Captain Smith, USAF) as other conventional titles are used. 5 CFR 2635.808(c)(2); JER 3-300.a(1)

- Air Force employees may not personally solicit funds from subordinates or from prohibited sources. 5 CFR 2635.808(c)(1)
- Air Force employees may conduct on-base fundraising efforts in their personal capacity (i.e., on personal time), if the event has been approved by base officials, and the event will take place away from workplace. JER 3-211.b; AFI 36-3101, Table 1.

Endorsement

- Air Force personnel may not use their official positions to state or imply an endorsement of a private organization (except for organizations listed in JER sec. 3-210.a.), nor may they use their official positions to provide preferential treatment to private organizations. JER sec. 3-209
- The same is true for endorsing fundraising efforts or membership drives; employees can only support these activities in their personal capacity (completely removed from their official position)

Conclusion

The JER rules are not designed to discourage Air Force employees from participating in private organizations. Rather, the rules help employees avoid ethical problems, such as improper endorsements and solicitations, conflicts of interest, and favoritism. Air Force personnel who are active in private organizations should be familiar with these rules to ensure that their personal activities do not improperly impact their Government duties and responsibilities.